



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2005

Ms. Amy J. Ramsey
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2005-04314

Dear Ms. Ramsey:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223363.

The Fort Worth Police Department (the "department") received a request for incident reports and dispatch records relating to a youth emergency shelter during a five-year time period. You state that the department will release some of the requested information but claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim that the majority of the submitted information is excepted under section 552.101 of the Government Code in conjunction with provisions of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007 is only applicable to records pertaining to juvenile suspects or offenders. *See id.*; *see also* Fam. Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). Information relating to juvenile crime victims is not made confidential by section 58.007. *See* Open Records Decision No. 628 at 6 (1994) (predecessor statute). Furthermore, for purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2).

You state that juveniles living at the youth shelter are placed voluntarily by their guardians and are not allowed to leave the shelter premises without approval of their guardians and the shelter’s staff. You further state that under state licensing requirements, if a juvenile leaves the property without permission the shelter must inform the juvenile’s guardian and report the juvenile as a runaway or escapee to local authorities. Based upon your representations and our review of the submitted information, we conclude that the most of the submitted information involves allegations of juvenile “delinquent conduct” and “conduct indicating a need for supervision” under section 58.007. Further, the conduct at issue occurred after September 1, 1997. Because none of the exceptions in section 58.007 appear to apply, this information is confidential in its entirety in accordance with section 58.007(c) of the Family Code and must be withheld pursuant to section 552.101 of the Government Code.

The information submitted as Exhibit C consists of police reports and the information submitted as Exhibit D consists of dispatch logs. We have marked the information in Exhibits C and D that is excepted under section 552.101 in conjunction with section 58.007. However, we note some of the information in Exhibits C and D is not confidential under section 58.007 because it does not indicate the identity, the age, or the necessary conduct to implicate the confidentiality of that provision.

The information submitted as Exhibit E consists of police reports. You claim this information is confidential under section 261.201 of the Family Code. Section 261.201 provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Family Code § 261.201(a). You have not demonstrated, nor is it apparent from our review, that the information submitted in Exhibit E was used or developed in an investigation under chapter 261. Thus, we conclude that the information in Exhibit E is not within the scope of section 261.201 of the Family Code. Accordingly, the city may not withhold Exhibit E on the basis that it is confidential under section 261.201.

However, we note that a police report submitted in Exhibit C is a report of alleged child abuse. *See* Fam. Code § 261.001 (defining “abuse” for purposes of Family Code, ch. 261); *see also* Fam. Code § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, this information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we find that this police report in Exhibit C, which we have marked, is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 also encompasses the doctrine of common law privacy. We note that the remaining police reports and dispatch log entries in Exhibits C, D, and E, as well as the police reports submitted as Exhibit F, contain information protected by the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We have marked the remaining submitted information in

Exhibits C, D, E, and F that must be withheld under section 552.101 in conjunction with common law privacy.

In summary, we have marked the information that must be withheld under section 552.101 of the Government Code in conjunction with sections 58.007 and 261.201 of the Family Code. We have also marked the information that must be withheld under section 552.101 in conjunction with common law privacy. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

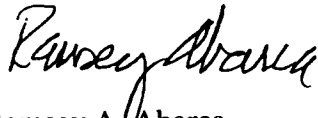
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ramsey Abarca". The signature is fluid and cursive, with the first name "Ramsey" and last name "Abarca" clearly distinguishable.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jev

Ref: ID# 223363

Enc. Submitted documents

c: Ms. Jennifer Autrey
Fort Worth Star-Telegram
400 West 7th Street
Fort Worth, Texas 76102
(w/o enclosures)